IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

JUDGMENT

The Oriental Insurance Co. Ltd. Vs. Smt. Ravi Prabha & Ors.

D.B. Civil Special Appeal No. 21/2003
in
S.B. Civil Misc. Appeal No. 891/1995

Date of order :: July 10, 2007

PRESENT
HON'BLE MR.JUSTICE R.C. GANDHI.
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Virendra Agarwal for the appellant
Mr. Dhananjay Bhardwaj on behalf of Mr. Vizzy Agarwal for the respondents

(ORAL, Per Hon'ble Gandhi,J.)

1. This appeal has been preferred against the order dated 27.02.2002 passed by the learned Single Judge in S.B. Civil Misc. Appeal No. 891/1995 arising out of the claim petition decided by the Motor Accidents Claims Tribunal (for short, 'MACT', hereinafter).

2. Learned counsel for the respondent has raised an objection regarding maintainability of the appeal submitting that in view of the judgment dated 08.03.2007 delivered by Division Bench of this Court in a batch of appeals including R.S.R.T.C. Vs. Vaibhav Kumar & Ors. and other 29 appeals, the appeal is not maintainable as the Section 100-A has been enacted by amendment of Section 4 of the CPC (Amendment) Act, 2002 envisaging that intra-court appeals filed on or after 01.07.2002 are not maintainable.

3. Learned counsel for the appellant has submitted that since the order was passed by the learned Single Judge on 27.02.2002 and therefore, he filed application seeking certified copy of the order, which was supplied to him within statutory stipulated period and he filed the appeal in the court on 16.08.2002, which came to be admitted on 17.07.2003 and has also been set down for hearing.

4. Learned counsel for the appellant has also relied upon the judgment of the Hon'ble Supreme Court in case title *Kamla Devi Vs. Kushal Kanwar* reported in AIR 2007 (SC) 663 in support of his plea. In this case, the suit was dismissed and the learned Single Judge dismissed the first appeal also. The order of the

learned Single Judge was set aside by the Division Bench. Before the Apex Court, the plea was raised that the judgment of the Division Bench is hit by Section 100-A of the CPC. The Apex Court while dealing with this plea, framed a particular question in para 7 of the judgment, which reads as under :-

> *"7. The core question which arises for consideration in this appeal is as to whether the Special Appeal filed by Respondent No. 1 herein before a Division Bench of the Rajasthan High Court was maintainable."*

This question has been answered by the Hon'ble Apex Court in para 20, 21 and 22 of the judgment holding as under :-

> *"20. Keeping in view the principles of law as enunciated in the aforementioned decisions of this Court, it is evident that a letters patent appeal, which was filed prior to coming into force of the 2002 Act would be maintainable.*
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> *21. Our attention has, furthermore, been drawn to the two decisions of this Court in Bento De Souza Egipsy (Dead) by Lrs v. Yvette Alvares Colaco and others [(2004) 13 SCC 438] and Sanjay Z. Rane and others v. Saibai S. Dubaxi (Dead) Through Lrs. [(2004) 13 SCC 439], wherein this Court opined that Section 100A of the Code has no retrospective effect.*
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> *22. We, therefore, are unable to accept the contentions of the learned counsel for the appellant that Section 100A of the Code will have retrospective effect so as to bring within its fold even the appeals*

preferred prior to coming into force of the said Act. The appeal is dismissed."

5. The plea of the learned counsel for the appellant is that since he was in the process of obtaining copy of order to be challenged and filing of appeal, which was filed on 16.08.2002 and the time taken therefor should be exempted as also the order was passed by the learned Single Judge before the cut-off date, i.e. 01.07.2002.

6. We are of the considered opinion that the mandate of law has to be applied as it is, which provides that with effect from 01.07.2002, the intra-court appeals shall not be maintainable in view of the enactment of Section 100-A CPC. Admittedly, the appeal was filed after the cut-off date, therefore, the plea of the learned counsel for the appellant has no substance.

7. Consequently, this appeal stands dismissed as non-maintainable in view of the Division Bench judgment of this court dated 08.03.2007.

(Dr.VINEET KOTHARI),J. (R.C. GANDHI),J.

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